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C O N F I D E N T I A L SECTION 01 OF 02 COLOMBO 001793

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DEPARTMENT FOR SCA/INS

E.O. 12958: DECL: 10/30/2016

TAGS: [PREL](#) [PTER](#) [PHUM](#) [PREF](#) [MOPS](#) [CE](#)

SUBJECT: HUMAN RIGHTS MINISTER URGES INTERNATIONAL SUPPORT  
DESPITE "BOUNDARIES" OF TERMS OF REFERENCE

REF: REF A) COLOMBO 1780 B) COLOMBO 1648 C) COLOMBO  
1651 D) COLOMBO 1676

Classified By: Ambassador Robert O. Blake for reasons 1.4(b,d).

11. (C) Summary: Disaster and Human Rights Minister Mahinda Samarasinghe hosted a meeting October 30 for Ambassadors and Heads of Mission from contributing countries to the International Independent Group of Eminent Persons (IIGEP) that will monitor the work of the Presidential Commission of Inquiry (CoI) on human rights. The Minister, along with the Deputy Solicitor General, addressed procedural issues and areas of dispute within the Terms of Reference (ToR) in consultation with the UN Office of the High Commissioner for Human Rights (OHCHR). We, along with Heads of Mission from Germany, Australia, Japan, the Netherlands, Canada, India and the EU reached consensus on procedural issues, including funding of international experts and their assistants by the nominating country. Some participants questioned a clause which would give the Attorney General a veto over public statements by the international team of advisors. The consensus between the Government of Sri Lanka (GSL) and OHCHR represents a significant step forward in the GSL's efforts to become more accountable on human rights. End Summary.

Procedural Issues  
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12. (C) Disaster and Human Rights Minister Mahinda Samarasinghe moderated a meeting October 30 attended by the Deputy Solicitor General Yasantha Kodagoda, who was charged with drafting the mandate for the Commission of Inquiry (CoI) and the terms of reference for the International Independent Group of Eminent Persons (IIGEP), the German Ambassador, Australian DCM, Japanese DCM, Netherlands Ambassador, Canadian High Commissioner, EU Ambassador, Indian DCM, DCM Moore, United Nations Office of the High Commissioner for Human Rights (OHCHR) representative Rory Mongoven, and Ministry of Foreign Affairs (MFA) representatives.

13. (C) The group addressed procedural issues, on which most agreed.

-- Minister Samarasinghe conceded to the Heads of Missions' request to fund the experts and assistants each respective country had nominated in order to insure the group's independence.

-- The parties also agreed that participating countries will decide the frequency and duration of visits by nominated experts, although experts' assistants will remain in country throughout the Commission of Inquiry period (at least one year).

¶4. (C) Minister Samarasinghe announced that in an effort to represent all communities, the Government of Sri Lanka (GSL) will appoint two Tamils, two Muslims, and four Sinhalese, including two women, to comprise the Commission of Inquiry. President Rajapaksa will sign the Presidential Warrant, or mandate, constituting the Commission of Inquiry on November ¶1. At least nine countries and international entities will be invited to contribute experts, including those present, the UK, the Inter-parliamentary Union (IPU), and possibly Amnesty International. In addition, one or more participants recommended by OHCHR will be selected. The GSL would like to nominate former Indian Justice Bhagwati to serve as chairman of the IIGEP (ref A).

#### Areas of Dispute

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¶5. (C) A clause in the draft ToR regarding making the IIGEP's findings public caused the most concern among the international representatives present. The Dutch Ambassador

COLOMBO 00001793 002 OF 002

noted that Article 11 of the ToR effectively gives the Attorney General a veto over public statements by members of the IIGEP should the material jeopardize "national security, public safety or well-being." The EU Ambassador contended that such an obvious "block" to the independent functioning of the Commission and advisors would raise flags with contributing countries.

¶6. (C) The German Ambassador questioned the GSL's prerogative to appoint of the chairman of the IIGEP (Justice Bhagwati). Samarasinghe answered that the clause was "not meant to manipulate the situation," adding: "What we are doing is groundbreaking in itself. We can always sort out the logistics later." The Dutch Ambassador suggested that the experts themselves nominate a chairperson while conceding to "realities that make it important to have a chairman from a neighboring country (India)."

¶7. (C) The Australian DCM, in turn, questioned the security of the IIGEP, arguing that his government would "not feel confident" with the Sri Lanka police providing protection and suggesting external security. Minister Samarasinghe responded that "we do have confidence in our police. I will personally guarantee their security."

#### We've Traveled This Far

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¶8. (C) Comment: Having heard the Ambassadors' arguments on the public statement clause, Minister Samarasinghe cautioned the group: "You know the difficulties we've had in traveling this far. Don't push too much, or we'll lose the whole thing. We have compromised on some language. We've encountered some boundaries. But over all, this is a good document." Despite its imperfections, the fact that the GSL has drafted Terms of Reference on a CoI on human rights that meets UN OHCHR approval represents a vast improvement in Sri Lanka's indigenous capacity to address human rights issues. End Comment.

¶9. (C) Action Request: We would appreciate the Department's comments on the ToR (emailed today to SCA/INS) by COB

November 1 as participating countries will meet again with Samarasinghe November 2 to provide capitals' reactions to them. In addition, we appreciate the Department's continued efforts to identify a suitable U.S. expert. End Action Request.

BLAKE